

## **PART 330-FEDERAL PLANT PEST REGULATIONS; GENERAL; PLANT PESTS; SOIL, STONE, AND QUARRY PRODUCTS; GARBAGE**

Authority: 7 U.S.C. 147a, 150bb, 150dd-150ff, 161, 162, 164a, 450, 2260; 19 U.S.C. 1306; 21 U.S.C. 111, 114a; 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(c). Source: 24 FR 10825, Dec. 29, 1959, unless otherwise noted.

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### **Subpart-General Provisions**

#### **§ 330.100 Definitions.**

Words used in the singular form in the regulations in this part shall be deemed to impart the plural and vice versa, as the case may demand. For the purposes of this part, unless the context otherwise requires, the following words shall be construed, respectively, to mean:

**Administrative instructions.** Published documents relating to the enforcement of the regulations in this part, issued under authority of such regulations by the Deputy Administrator.

**Administrator.** The Administrator of the Animal and Plant Health Inspection Service of the Department, or any officer or employee of the Animal and Plant Health Inspection Service to whom authority has heretofore been delegated or may hereafter be delegated to act in his/her stead.

**Continental United States.** The 49 States located on the continent of North America and the District of Columbia.

**Customs.** The Bureau of Customs, U.S. Treasury Department, or, with reference to Guam, the Customs office of the Government of Guam.

**Department.** The U.S. Department of Agriculture.

**Deputy Administrator.** The Deputy Administrator of the Plant Protection and Quarantine Programs of the Animal and Plant Health Inspection Service of the Department, or any officer or employee of the Plant Protection and Quarantine Programs to whom authority has heretofore been delegated or may hereafter be delegated to act in his stead.

**Earth.** The softer matter composing part of the surface of the globe, in distinction from the firm rock, and including the soil and subsoil, as well as finely divided rock and other soil formation materials down to the rock layer.

**Garbage.** That material designated as ``garbage" in § 330.400(b).

**Inspector.** A properly identified employee of the Department or other person authorized by the Department to enforce the provisions of the Federal Plant Pest Act and the Plant Quarantine Act.

**Interstate.** From one State, Territory or possession or the District of Columbia into or through any other State, Territory or possession, or the District of Columbia. This term includes movements, within its provisions, to a port in the United States for export.

**Means of conveyance.** Automobiles, trucks, animal-drawn vehicles, railway cars, aircraft, boats, and other means of transportation. **Move** (moved and movement). ``Move" means ship, deposit for transmission in the mail, otherwise offer for shipment, offer for entry, import, receive for transportation, carry, or otherwise transport or move, or allow to be moved, by mail or otherwise. ``Moved" and ``movement" shall be construed accordingly.

**Owner.** The owner, or his agent (including a carrier), having responsible custody of a plant pest, means of conveyance, product or article subject to the regulations in this part.

**Permit.** An authorization allowing the movement into or through the United States, or interstate, of a plant pest, or a regulated product, article, or means of conveyance in accordance with the provisions in this part.

**Person.** Any individual, corporation, company, association, firm, partnership, society, or joint stock company.

**Plant pest.** (1) Except for §§ 330.200 through 330.212, ``plant pest" means any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured, or other products of plants.

(2) For purposes of §§ 330.200 through 330.212, ``plant pest" means any living stage of insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances of the aforementioned which are not genetically engineered as defined in 7 CFR 340.1 which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured, or other products of plants.

**Plant Protection and Quarantine Programs.** The Plant Protection and Quarantine Programs, Animal and Plant Inspection Health Service of the Department.

**Plant Quarantine Act.** The act approved August 20, 1912, 37 Stat. 315 as amended (7 U. S. C. 151 et seq.).

**Regulated garbage.** That material designated as ``regulated garbage" in § 330.400(c) and § 330.400(d).

**Shelf-stable.** The condition achieved in a product, by application of heat, alone or in combination with other ingredients and/or other treatments, of being rendered free of microorganisms capable of growing in the product at nonrefrigerated conditions (over 50° F. or 10° C.).

**Soil.** The loose surface material of the earth in which plants grow, in most cases consisting of disintegrated rock with an admixture of organic material and soluble salts.

**Territories or possessions.** Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States. The Federal Plant Pest Act. Title I of the act approved May 23, 1957 (Title I, 71 Stat. 31; 7 U. S.

C. 150aa et seq.).

Through the United States. From and to places outside the United States.

United States. The States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States.

[24 FR 10825, Dec. 29, 1959, as amended at 36 FR 24917, Dec. 24, 1971; 39 FR 32320, Sept. 6, 1974; 43 FR 39954, Sept. 9, 1978; 45 FR 80268, Dec. 4, 1980; 52 FR 22907, June 16, 1987; 52 FR 49344, Dec. 31, 1987; 53 FR 49976, Dec. 13, 1988]

#### **§ 330.101 Policy.**

The purpose of the regulations in this part is to prevent the dissemination of plant pests into the United States, or interstate, by regulating the movement of plant pests into or through the United States, or interstate, and the movement of means of conveyance, earth, stone and quarry products, garbage, and certain other products and articles into or through the United States, or from any Territory or possession into or through any other Territory or possession or the continental United States. The Deputy Administrator shall employ procedures to carry out this purpose which will impose a minimum of impediment to foreign commerce and travel whenever practicable, consistent with proper precaution against plant pest dissemination. The same policy is to be applied in the case of interstate commerce and travel.

#### **§ 330.102 Basis for certain regulations.**

Whereas the unregulated movement of means of conveyance, their stores, baggage, mail, plants, plant products, garbage, earth, stone and quarry products, and other products and articles into or through the United States from places outside thereof or from any Territory or possession into or through any other Territory or possession or the continental United States may disseminate plant pests which are outside the scope of the Plant Quarantine Act, as well as pests within that act, and whereas authority to regulate the movement into or through the United States from foreign countries of means of conveyance and other nonplant products and articles, independently of plants or plant products, is not conferred by the Plant Quarantine Act, the regulations in this part are promulgated under the authority of the Federal Plant Pest Act.

#### **§ 330.103 Documentation.**

Any notifications, reports, and similar documentation not specified in the regulations in this part, but necessary to carry out the purpose of the regulations, will be prescribed in administrative instructions.

#### **§ 330.104 Ports of entry.**

Ports of entry for plant pests, means of conveyance, or other products or articles of any character whatsoever the entry or movement of which is regulated by the regulations in this part may be specified in administrative instructions or in the permits if permits are required by the regulations. Such ports shall be selected by the Deputy Administrator from ports named in 19 CFR 1.2 as "ports of entry" for the purpose of enforcing the customs laws or named in 19 CFR 6.13 as "international airports," or airports at which permission to land aircraft has been granted by the Commissioner of Customs or by the Collectors of Customs in accordance with 19 CFR 6.2. Except as otherwise provided by administrative instructions, or by permits issued in accordance with this part, the ports of entry shall be those named in 19 CFR 1.2 and 6.13. The port of entry in Guam shall be Agana unless otherwise specified in the permit by the Deputy Administrator.

#### **§ 330.105 Inspection.**

(a) Inspection of foreign arrivals. In order to prevent the dissemination into the United States of plant pests and for the purpose of carrying out the regulations in this part, all plant pests; means of conveyance and their stores; baggage; mail; plants; plant products; soil; stone and quarry products under § 330.300; garbage; and any other product or article of any character whatsoever which an inspector considers may be infested or infected by or contain a plant pest, arriving in the United States from any place outside thereof for entry into or movement

through the United States shall be subject to inspection by an inspector at the port of first arrival, except that mail will be handled in accordance with the joint customs and postal regulations for inspecting and handling mail. No such plant pests; means of conveyance or their stores; baggage; mail; plants; plant products; soil; stone or quarry products under § 330.300; garbage; or other products or articles which an inspector notifies the Customs authorities should be held for inspection shall be released by Customs officers for entry or onward movement until released by an inspector. The release of all means of conveyance, products and articles regulated under parts 319, 320, 321, and 352 of this chapter shall be in accordance with the requirements of those parts and the applicable provisions in this part. Whenever it shall be deemed safe to modify the requirements of this section by exempting any class of means of conveyance, products or articles from the requirement that they be held for inspection and release of the inspector, the exemptions shall be specified in administrative instructions. Inspectors shall make local arrangements, in accordance with policies of the Plant Protection and Quarantine Programs, with the Collector of Customs for the release by Customs officers on behalf of the inspector of any class of means of conveyance, their stores, baggage, mail, or other products or articles when such arrangements do not increase unduly the danger of plant pest dissemination and will facilitate clearance of means of conveyance, baggage, mail, or other products or articles.

(b) Inspection of domestic movements. For the purpose of preventing the interstate movement of plant pests, provisions requiring inspection of means of conveyance and products or articles moving interstate may be issued as regulations in association with quarantines in part 301 or part 318 of this chapter or in this part.

Note: Notices appearing at 24 FR 4650, June 9, 1959, 24 FR 5363, July 2, 1959, 24 FR 6889, August 26, 1959, and 24 FR 7519, September 18, 1959, provide in part as follows: That means of conveyance subject to such inspection and release requirements and arriving at any port of entry outside the regularly assigned hours of duty of the Federal plant quarantine inspector, will be held for such inspection and release, until the regularly assigned hours of duty. However, notice is also hereby given that pursuant to the provisions of the Act of August 28, 1950 (7 U.S.C. 2260) such inspection service outside of the regularly assigned hours of duty may be made available to any interested person, upon a reimbursable basis and in accordance with applicable regulations, upon request to the Plant Quarantine Inspector in Charge at such port.

Information concerning regularly assigned hours of duty for Federal plant quarantine inspectors at each port where such inspection is available may be obtained locally by application to the Plant Quarantine Inspector in Charge at such port.

### **§ 330.106 Emergency measures.**

(a) Procedures to prevent pest dissemination. Whenever inspection of any means of conveyance, stores, baggage, mail, plants, plant products, earth, stone and quarry products, garbage, or other products or articles of any character whatsoever, arriving in the United States from a place outside thereof, or moving interstate, discloses a plant pest, or provides a reason to believe such a pest is present (other than one moving under permit in accordance with any conditions in the permit and the provisions in this part) which is new to, or not theretofore known to be widely prevalent or distributed within and throughout the United States, the inspector shall employ procedures necessary to prevent the dissemination of the plant pest. Such procedures shall also be employed with respect to means of conveyance or products or articles of any character whatsoever which have moved into the United States or interstate and which the inspector has reason to believe were infested or infected by or contained any such plant pest at the time of such movement. The inspector may follow administrative instructions containing procedures prescribed for certain situations, or he may follow a procedure selected by him from administratively approved methods known to be effective. The procedure may involve seizure, quarantine, treatment, application of other remedial measures, exportation, return to shipping point of origin, destruction, or other disposal, but no means of conveyance, product, article, or plant pest owned by any person shall be destroyed, exported, or returned to shipping point of origin or ordered to be so handled, unless there is, in the opinion of the inspector, no less drastic action adequate to prevent the dissemination of the plant pest. In forming such an opinion that no less drastic action is adequate, the inspector shall be guided by applicable specific and general instructions received from officers of the Plant Protection and Quarantine Programs. This section does

not authorize action with respect to any means of conveyance, product, article, or plant pest which, at the time of the proposed action, is subject to disposal under the Plant Quarantine Act. In taking action with respect to any means of conveyance, product, article, plant pest, the inspector shall take cognizance of applicable requirements of the customs and postal laws and regulations.

(b) Orders for remedial measures. The inspector may order the owner of any means of conveyance, product, article, or plant pest, subject to disposal under paragraph (a) of this section, to treat, apply other remedial measures, destroy, or make other disposal thereof without cost to the Federal Government and in a manner specified in accordance with paragraph (a) of this section.

(c) Failure to apply remedial measures. If the measures required by the inspector are not applied promptly by the owner within the time limits specified by the inspector, the inspector shall apply measures necessary to prevent the dissemination of the plant pests.

(d) Khapra beetle infestations of means of conveyance, or cargo or stores thereof; other infestations. As a means of preventing the dissemination into the United States, or interstate, of the khapra beetle (*Trogoderma granarium* Everts), the following procedures will be applicable when that insect is found, or there is reason to believe it is present, in a means of conveyance within paragraph (a) of this section, or in any cargo or stores in such a means of conveyance, or in any cargo or stores unloaded or landed, or being unloaded or landed, in the United States therefrom. These procedures will also apply with respect to other plant pests when the inspector finds they are necessary and sufficient to prevent the spread of such pests.

(i) Infestation in storerooms and similar compartments of means of conveyance (except aircraft). When infestation is found only in stores or storerooms, galleys, pantries, or similar noncargo compartments of a means of conveyance, except aircraft, the inspector shall prescribe and supervise the application of such remedial measures as, in his opinion, will be effective under conditions that will not spread the infestation to other parts of the means of conveyance, or to adjacent piers or other installations. If, in the opinion of the inspector, fumigation is the only available safeguard to eliminate the infestation, he shall order the owner to arrange for immediate fumigation of the infested stores and portions of the means of conveyance.

(ii) If the means of conveyance is to leave the territorial limits of the United States directly for a port in another country within 24 hours of such order, the inspector may suspend compliance with the fumigation requirement pending departure from the United States. Pending fumigation or departure, the inspector may seal the openings of infested compartments, packages, or articles, if in his opinion the action is necessary to prevent plant pest dissemination while the means of conveyance remains in the territorial limits of the United States, as authorized in § 330.110. The inspector may extend the 24-hour period to 48 hours, if, in his judgment, such extension is warranted by plans of the owner to remove the means of conveyance from the territorial limits of the United States within the extended period, the inability of the contractor to begin fumigation within the 24-hour period, or other reason deemed valid by the inspector. Further extension shall be given only under authority of the Deputy Administrator. Pending compliance with the requirement of fumigation, or the departure from the territorial limits of the United States directly for a port in another country, no stores, laundry, furnishings or equipment, or other articles or products whether in cargo or stores, shall be unloaded from the means of conveyance except as authorized by the inspector and under conditions prescribed by him. The owner of an infested means of conveyance under notice for fumigation which leaves the territorial limits of the United States without fumigation should arrange for the eradication of the infestation before returning to the same or another port in the United States. Upon return to a port in the United States and unless the infestation has been eliminated to the satisfaction of the inspector, the means of conveyance shall be subject to fumigation immediately upon arrival in the United States. Unloading or landing of any product or article shall not be permitted pending compliance with the fumigation requirement, except as authorized by the inspector and under conditions prescribed by him.

(iii) If the means of conveyance is to remain at the port where the infestation was found or is to be moved to another port in the United States, the inspector shall prescribe and supervise the application of the remedial

measures at the port where the infestation is found, as provided in this paragraph, or he may authorize the means of conveyance to be moved to another port for fumigation or the application of other remedial measures under safeguards prescribed by him.

(iv) In all instances where the inspector prescribed procedures concerned with the application of remedial measures which involve

- (a) withholding permission to discharge articles or products;
- (b) permission to discharge after such permission has been withheld;
- (c) discontinuance of discharging; or
- (d) resumption of discharging after it has been discontinued, the appropriate Customs officer shall be immediately notified in writing. The inspector shall also inform the Customs officers at the port where the infestation is found and at such other ports as may be necessary of the requirement for fumigation and/or permission to move coastwise to another U.S. port for fumigation or other remedial measures.

(2) Infestation in cargo compartments of means of conveyance (except aircraft). When infestation is found in cargo compartments or in cargo of a means of conveyance, except aircraft, the inspector shall prescribe and supervise the application of such remedial measures as, in his opinion are necessary, with respect to the cargo and the portions of the means of conveyance which contain or contained or were contaminated by the infested cargo. If in the opinion of the inspector fumigation is the only available safeguard to eliminate the infestation, he shall order the owner to arrange for immediate fumigation of the infested portions of such means of conveyance and cargo. However, if such cargo compartments cannot be fumigated without fumigating the entire means of conveyance, the inspector may order the entire means of conveyance and cargo to be fumigated. The inspector shall notify the owner of the means of conveyance of such requirement and the owner shall arrange for immediate fumigation. Discharge of cargo shall be discontinued unless the inspector allows it to continue under safeguards to be prescribed by him. The provisions applicable to stores and storerooms in paragraph (d)(1) (ii) and (iii) of this section shall apply to cargo and cargo areas of such means of conveyance. Customs officers shall be informed as required in paragraph (d)(1)(iv) of this section.

(3) Infestation in an aircraft. If infestation is found in an aircraft, the inspector may apply seals as provided in § 330.110, and he may require such temporary safeguards as he deems necessary, including the discontinuance of further unloading or landing of any products or articles except as authorized by him. Upon finding such infestation in an aircraft the inspector shall promptly notify the Plant Protection and Quarantine Programs of all circumstances and the temporary safeguards employed, and the Plant Protection and Quarantine Programs will specify the measures for eliminating the infestation which will not be deleterious to the aircraft or its operating components. Any insecticidal application required shall be approved by the Deputy Administrator for use in aircraft. If the aircraft is to depart from the territorial limits of the United States within 24 hours after the infestation is found, the inspector shall permit such departure in lieu of the application of other measures and shall prior to departure break any seals that would prevent access to the aircraft or safe operation thereof. Other seals shall remain intact at time of departure and shall be broken by the aircraft commander or a crew member upon his order only after the aircraft is beyond the territorial limits of the United States. Extension of the 24-hour period shall be given only under authority of the Deputy Administrator. The owner of the aircraft under notice of khapra beetle infestation which leaves the territorial limits of the United States before the infestation has been eradicated should arrange for eradication before returning the aircraft to the United States. Upon return to the United States, if the infestation is not eliminated to the satisfaction of the inspector, the aircraft shall be subject to the same disinfestation requirements and other safeguards immediately upon arrival in the United States. Customs officers shall be notified as required in paragraph (d)(1)(iv) of this section.

(4) Precautions. The owner of a means of conveyance required to be fumigated pursuant to this section shall arrange with a competent operator to apply the fumigant under the supervision of the inspector. The owner shall understand that if certain fumigants are used they may result in residues in or on foodstuffs which may render

them unsafe for use as food items. He is hereby warned against such use unless as ascertains that the fumigated foodstuffs are fit for human consumption. It should also be understood by the owner that emergency measures prescribed by the inspector to safeguard against dissemination of infestation may have adverse effects on certain products and articles, and that the acceptance of fumigation as a requirement is an alternative to the immediate removal of the infested means of conveyance and any products and articles thereon, from the territorial limits of the United States. Products or articles in a means of conveyance, or compartments thereof, which may be exposed to methyl bromide or other remedial measures and may be adversely affected thereby, may be removed from the means of conveyance or compartments thereof prior to the application of the remedial measures if in the opinion of the inspector this can be done without danger of plant pest dissemination and under conditions authorized by him, for additional inspection and/or application of effective remedial measures.

[24 FR 10825, Dec. 29, 1959, as amended at 25 FR 8989, Sept. 20, 1960; 32 FR 6339, Apr. 21, 1967; 36 FR 24917, Dec. 24, 1971]

#### **§ 330.107 Costs.**

All costs (including those incurred under § 330.106 of this part by the government or the owner) incident to the inspection, handling, cleaning, safeguarding, treating, or other disposal of means of conveyance or products, articles, or plant pests under this part shall be borne by the owner. Services of the inspector during regularly assigned hours of duty at the usual places of duty shall be furnished without cost to the person requesting the services, unless a user fee is payable under § 354.3 of this chapter.

Cross reference: See note following § 330.105.

[56 FR 14844, Apr. 12, 1991]

#### **§ 330.108 Authority to issue administrative instructions.**

The Deputy Administrator is authorized to issue the administrative instructions for which provision is made in the regulations in this part, for the purpose of preventing dissemination of plant pests into the United States or interstate. In addition, whenever the Deputy Administrator shall find that existing conditions as to pest risk involved in the movement of plant pests, means of conveyance, or other products or articles to which the regulations in this part apply, make it safe to modify by making less stringent the restrictions contained in any of such regulations, he shall publish such findings in administrative instructions, specifying the manner in which the regulations shall be made less stringent whereupon such modification shall become effective.

#### **§ 330.109 Caution.**

In applying treatments or taking other measures prescribed in administrative instructions or by the inspector, it should be understood that inexactness or carelessness may result in injury or damage.

#### **§ 330.110 Seals.**

(a) Use authorized; form. Whenever, in the opinion of the inspector, it is necessary, as a safeguard in order to prevent the dissemination of plant pests into the United States, or interstate, seals may be applied to openings, packages, or articles requiring the security provided by such seals. The words "openings, packages, or articles" shall include any form of container, shelf, bin, compartment, or other opening, package, or article which the inspector may have occasion to seal in lieu of more drastic action or otherwise, as a safeguard against plant pest dissemination. The seals may be automatic metal seals or labels or tags and will be provided by the Plant Protection and Quarantine Programs. When they consist of a label or tag, they will be printed in black ink on yellow paper and read substantially as follows: "Warning! The opening, package, or article to which this seal is affixed is sealed under authority of law. This seal is not to be broken while within the territorial limits of the United States except by, or under instructions of, an inspector."

(b) Breaking of seals. Seals may be broken: (1) By an inspector; (2) by a Customs officer for Customs purposes, in which case the opening, package, or article will be resealed with Customs seals; (3) by the owner or his agent when the means of conveyance, product, or article has left the territorial limits of the United States; (4) by any

person authorized by the inspector or the Deputy Administrator under conditions specified by the inspector or Deputy Administrator. No person shall break seals applied under authority of this section except as provided in this paragraph. The movement into or through the United States, or interstate, of any means of conveyance or product or article on which a seal, applied under this paragraph, has been broken in violation of this paragraph is hereby prohibited, except as authorized by an inspector.

(c) Notice of sealing. When an inspector seals any opening, product or article, he shall explain the purpose of such action to the owner or his representative and shall present him with a written notice of the conditions under which the seal may be broken, if requested to do so.

[25 FR 8990, Sept. 20, 1960, as amended at 36 FR 24917, Dec. 24, 1971]

### **§ 330.111 Advance notification of arrival of aircraft and watercraft.**

The owner, operator, or other representative of any aircraft or watercraft entering the United States from a foreign country, or arriving in the continental United States from Hawaii or any territory or possession of the United States, shall provide every Plant Protection and Quarantine office (PPQ office) serving a port of arrival on the itinerary of the craft while in the United States with advance notification of intent to arrive at that port. This advance notification of arrival shall:

- (a) Reach the appropriate PPQ office not less than 12 hours before the craft's estimated time of arrival at the port;
- (b) Be communicated by radio, wire, telephone, or any other means; and
- (c) Include the following information:
  - 1. The name or other identifying feature of the individual craft;
  - 2. The date and estimated time of arrival at the port;
  - 3. The location of arrival, providing the most site-specific data available, such as the dock, pier, wharf, berth, mole, anchorage, gate, or facility, and;
  - 4. The names of all foreign and non-Continental U.S. ports where any cargo, crew, or passenger destined for the continental United States has boarded the craft since its most recent arrival at a port in the United States.
- (d) If the craft's estimated time of arrival changes by more than one hour, the PPQ office that serves the port of arrival must be notified and provided with updated information immediately.
- (e) If the craft's site of arrival changes after a PPQ office has received advance notification of arrival, both that PPQ office and the newly affected PPQ office shall be notified of this change immediately. This applies, too, to site-specific changes involving watercraft.
- (f) If the craft's point of arrival is an anchorage, the PPQ office shall be notified, as soon as possible after the craft's arrival at the anchorage, of the specific site, such as berth, mole, pier, to which the craft will be moving, as well as of its estimated time of arrival at that site.
- (g) Aircraft and watercraft meeting any of the following conditions are exempt from the provisions in this section, and need not provide advance notification of arrival:
  - 1. The craft is not regularly used to carry passengers or cargo for a fee;
  - 2. The aircraft is making a flight scheduled in the Official Airline Guide, North American Edition, or the Official Airline Guide, Worldwide Edition, unless the scheduled time of arrival changes by more than one hour or the plane is diverted to another landing port;
  - 3. An inspector has precleared the aircraft in Hawaii, a territory or possession of the United States, or a



- foreign port, having determined that the aircraft contained only articles that are not prohibited or restricted importation into the United States under the provisions of 7 CFR chapter III and 9 CFR chapter I; or
4. Personnel of the United States armed forces, including the U.S. Coast Guard, in Hawaii, a territory or possession of the United States, or a foreign port, have precleared an aircraft, having determined that the aircraft contained only articles that are not prohibited or restricted importation into the United States under the provisions of 7 CFR chapter III and 9 CFR chapter I.
  5. The owner, operator, or other representative of the aircraft or watercraft not leaving the United States has been informed in writing by a PPQ inspector that notification of intended arrival is not required at subsequent ports in the United States.

(Approved by the Office of Management and Budget under control number 0579-0054) [52 FR 49344, Dec. 31, 1987]

### **Subpart-Movement of Plant Pests**

#### **§ 330.200 Movement of plant pests regulated; permits required.**

No person shall knowingly move any plant pest into or through the United States from any place outside thereof, or interstate, or knowingly accept delivery of any plant pest so moving unless such movement is authorized under permit under this part and is made in accordance with the conditions therein and the provisions in this part. The movement of snails and slugs, as well as other plant pests, is governed by such provisions. Biological specimens of plant pests, in preservative or dried, may be imported without further restriction under this part, but subject to inspection on arrival in the United States to confirm the nature of the material and freedom from risk of plant pest dissemination.

#### **§ 330.201 Applications for permits to move plant pests.**

(a) Into or through the United States from any place outside thereof. Only persons resident in the United States may apply for permits to move plant pests into the United States from any place outside thereof. Persons resident in the United States proposing such movement into the United States, or any person proposing movement through the United States, of any plant pests shall first make application for permits authorizing such movement by submitting to the Plant Protection and Quarantine Programs the form provided therefor by the Plant Protection and Quarantine Programs, or by submitting in the form of a letter or other written communication the following information insofar as is known to the applicant, for each kind of pest for which a permit is requested: (1) Scientific name of the pest, (2) stage, (3) quantity, (4) origin, (5) destination, (6) whether the pest is established in the State, Territory or other jurisdiction of destination in the United States, (7) method of shipment, (8) proposed port of first arrival in the United States, (9) approximate date of arrival, (10) number of parcels expected to be moved, (11) intended use, (12) measures to be employed to prevent danger of plant pest dissemination, and (13) method of final disposition. In addition, if host materials must necessarily accompany the plant pests, the application shall show the name of the host materials and the reasons it is necessary for them to accompany the plant pests. Applications for permits to move plant pests through the United States should state the name of the port of export instead of the information required by paragraph (a)(6) of this section. Any applicant for a permit to move plant pests into or through the United States from any place outside thereof will facilitate the consideration of his application by furnishing any additional information known to him concerning the economic importance of the pests and the justification for the movement.

(b) Interstate (including interstate for export). Persons proposing to move plant pests interstate shall first make application for permits authorizing such movement by submitting to the Plant Protection and Quarantine Programs the form provided therefor by the Plant Protection and Quarantine Programs or by submitting the required information in the form of a letter or other written communication showing all pertinent information specified in paragraph (a) of this section and also the approximate date of the movement, except that persons desiring to move plant pests interstate to a port in the United States for export to a place outside of the United States{1} shall use the form provided therefor by the Plant Protection and Quarantine Programs or submit to the Plant Protection and Quarantine Programs in the form of a letter or other written communication the following

information for each kind of pest: Scientific name of the pest, stage, quantity, origin, destination, method of shipment, proposed port of export from the United States, approximate date of the movement, number of parcels to be moved, proposed use, and measures to be employed to prevent danger of plant pest dissemination during the interstate movement. However in case it is proposed to move interstate, within or from an area quarantined under §§ 301.38, 301.45, 301.48, 301.52, 301.63, 301.64, 301.72, 301.76, 301.77, 301.78, 301.79, 301.80, or 301.81 of this chapter any plant pest covered by said section, the application should be made to the Plant Protection and Quarantine Programs of the Animal and Plant Health Inspection Service of the Department. In any case the applicant for a permit will facilitate the consideration of his application by furnishing any additional information known to him concerning the economic importance of the pests and the justification for the movement.

\*{1} Persons contemplating the shipment of plant pests to places outside the United States should make prior arrangements directly, or through the recipient, with the country of destination for the receipt of the plant pests into the country of destination. Many countries have laws governing the movement of plant pests into those countries, and therefore it is advisable to make advance arrangements for attaching permits, etc., as may be required by the countries of destination.

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#### **§ 330.202 Consideration of applications for permits to move plant pests.**

The Deputy Administrator, upon the receipt of an application, made in accordance with § 330.201 (a) or (b), for a permit for movement of a plant pest into or through the United States from any place outside thereof, or interstate, shall consider the application on its merits.

(a) Consultation. He may consult with any Federal officials, the appropriate officials of any State, Territory, or other jurisdiction in the United States in charge of research or regulatory programs relative to plant pests, and any other qualified governmental or private research laboratory, institution, or individual, for views on the danger of plant pest dissemination into the United States, or interstate, in connection with the movement proposed.

(b) Inspection of premises. The Deputy Administrator may inspect the site where plant pests are proposed to be handled in connection with or after their movement under permit to determine whether existing or proposed facilities will be adequate to prevent plant pest dissemination in case a permit is issued, provided that the person in possession thereof is the applicant or such inspection is otherwise authorized.

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[24 FR 10825, Dec. 29, 1959, as amended at 48 FR 57466, Dec. 30, 1983]

#### **§ 330.203 Action on applications for permits to move plant pests; form of and conditions in permits.**

The Deputy Administrator, having considered an application for permit to move a plant pest, shall approve or deny the application in accordance with § 330.204. If the application is denied, the applicant shall be furnished the reasons therefor. If the application is approved, the Deputy Administrator shall issue the permit including any conditions which, in the opinion of the Deputy Administrator, are necessary to prevent dissemination of plant pests into the United States or interstate. Such conditions may include requirements for inspection of the premises where the plant pests are to be handled, after their movement under the permits, to determine whether the facilities thereat are adequate to prevent plant pest dissemination and the conditions of the permit are otherwise being observed. Permits authorizing movement of plant pests through the United States will include shipping instructions as to routing, labelling, and similar requirements as conditions of the permits. Any applicable conditions prescribed in administrative instructions may be incorporated in a written permit by citation, but shall be applicable whether or not so cited. The Deputy Administrator may, prior to the issuance of the permit, require the applicant to agree in writing to the conditions under which the plant pests will be

safeguarded. The permits may be issued in a prescribed form or in letter form, or a combination thereof. A permit without conditions may be issued orally.

#### **§ 330.204 Denial or cancellation of permits; reconsiderations.**

(a) The Deputy Administrator will deny an application for a permit to move a plant pest when, in his opinion, such movement would involve a danger of dissemination of the pest. Danger of plant pest dissemination may be deemed to exist when:

1. No acceptable safeguards adequate to prevent plant pest dissemination can be arranged;
2. The destructive potential of the plant pest to plants, and parts and products thereof, should it escape despite proposed safeguards, outweighs the probable benefits to be derived from the proposed movement and use of the pest;
3. The applicant, as a previous permittee, failed to maintain the safeguards or otherwise observe the conditions prescribed in a previous permit and failed to demonstrate his ability or intent to observe them in the future;
4. The movement is adverse to the conduct of an eradication, suppression, control, or regulatory program of the Animal and Plant Health Inspection Service; or
5. The movement is objected to in writing by an appropriate official of a State, Territory or possession, or the District of Columbia on the ground it will involve a danger of dissemination of the plant pest into the State, Territory or possession, or District.

(b) The Deputy Administrator may cancel any outstanding permit whenever:

1. Information is received subsequent to the issuance of the permit of circumstances that constitute cause for the denial of an application for permit under paragraph (a) of this section; or
2. The permittee has not maintained the safeguards or otherwise observed the conditions specified in the permit or in any applicable regulations or administrative instructions.

(c) Any person denied a permit, or whose permit has been canceled, may request the Deputy Administrator in person or in writing for a reconsideration, and may submit any additional information he may have to support the original application.

#### **§ 330.205 Disposal of plant pests when permits are canceled.**

When an outstanding permit for the movement of a plant pest is canceled by the Deputy Administrator and not reinstated under § 330.204(c), the further movement of the plant pest covered thereby into or through the United States, or interstate, is prohibited by the Federal Plant Pest Act unless authorized in another permit. The permittee should arrange for disposal of the plant pest involved in a manner satisfactory to the Deputy Administrator to prevent plant pest dissemination. The Deputy Administrator may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as he deems appropriate, any plant pest which is moving without compliance with any conditions in the permit or the provisions of this part or after the permit has been canceled.

#### **§ 330.206 Permits for plant pest movement associated with National Defense projects.**

The Deputy Administrator will facilitate research associated with National Defense projects through issuance of permits for movement of plant pests for such research, upon receiving assurance satisfactory to him that adequate safeguards will surround utilization of the plant pests to prevent their dissemination.

#### **§ 330.207 Permits for movement of organisms issued by other agencies.**

Inspectors shall recognize permits for the movement of organisms issued under other acts by other Federal agencies. When such organisms are also plant pests, any further conditions of movement to carry out the

purposes of the Federal Plant Pest Act which have been prescribed in administrative instructions, or in correspondence concerning a single shipment, shall be complied with but no additional permit will be required under this part.

#### **§ 330.208 Courtesy permits.**

The Deputy Administrator may issue permits for the movement into or through the United States, or interstate, or organisms which are not subject to regulation under the Federal Plant Pest Act or any other act, as a courtesy to facilitate movement when the movement might otherwise be impeded because of the similarity of the organisms with others regulated under the Federal Plant Pest Act. He may likewise issue such permits on behalf of any agency requesting such action as a courtesy to facilitate movement for organisms not subject to regulation under the Federal Plant Pest Act but subject to regulation under some other act.

#### **§ 330.209 Permits for means of conveyance.**

No permit shall be required for movement into or through the United States from any place outside thereof, or interstate, of a means of conveyance unless the primary purpose of such movement of the means of conveyance is to move plant pests.

#### **§ 330.210 Packing materials and containers for plant pest movement; host materials.**

Plant pests moved into or through the United States, or interstate, must be free of soil, except when the Deputy Administrator approves in the permit the movement of soil with the plant pest. Subject to this exception, only approved packing materials are to be employed in the shipment of plant pests. Approved packing materials for the movement of plant pests under this part will be prescribed in administrative instructions or approved in specific cases by the Deputy Administrator. Such actions will be coordinated with and may supplement any requirements of the Post Office Department governing packing and packaging of any materials for movements covered by the postal laws and regulations. All containers shall be stoutly constructed so as to prevent breakage in transit and danger of plant pest dissemination and shall be labeled in accordance with § 330.211. The Deputy Administrator may allow the movement of host materials with plant pests under permits when they must necessarily accompany the pests, although such movement is otherwise barred under the Plant Quarantine Act.

#### **§ 330.210a Administrative instructions listing approved packing materials for plant pests.**

(a) The following materials are approved as packing materials for use with any shipment of plant pests in accordance with § 330.210:

- (1) Absorbent cotton or processed cotton padding free of cottonseed.
- (2) Cellulose materials.
- (3) Excelsior.
- (4) Felt.
- (5) Ground peat (peat moss).
- (6) Paper or paper products.
- (7) Phenolic resin foam.
- (8) Sawdust.
- (9) Sponge rubber.
- (10) Thread waste; twine; or cord.
- (11) Vermiculite.

(b) Advance approval for the use of any other packing material for any specific movement should be obtained from the Deputy Administrator.

#### **§ 330.211 Labelling of plant pests for movement under permits.**

(a) Interstate movement. For interstate movements of plant pests a label shall be attached to each parcel containing the pests as evidence that the movement of the plant pests is authorized. Such label shall also disclose the contents of the parcel.

(b) Movement into or through the United States from places outside thereof by mail or cargo. (1) When a permit authorizing the movement of plant pests into the United States from any place outside thereof is issued to an applicant under this part, it will be accompanied by distinctive labels, with instructions for their use by the foreign shipper. Such labels will be issued in quantity sufficient to permit attaching one to each parcel to be moved. The labels will direct the parcels to specified inspection stations of the Plant Protection and Quarantine Programs, or other designated points, for clearance. The stations will be notified by the Deputy Administrator in advance of the expected arrival of the plant pests. Plant pests so moved by mail may be refused entry unless the containers thereof bear such labels. Cargo shipments of plant pests so moved may be refused entry unless they bear such labels or are otherwise plainly marked to identify the contents.

(2) Any labelling requirements with respect to the movement of plant pests through the United States will be included in shipping instructions issued as conditions of the permits.

(c) Misuse of labels. No labels unused in accordance with the terms of the permit may be used for the movement of any other plant pest. The Federal Plant Pest Act provides a penalty{2} for the misuse of labels under this part. Any unauthorized movement of plant pests under a label shall be refused by the inspector, and the plant pests so moved may be destroyed or otherwise dealt with as set out in § 330.106 if deemed necessary as an emergency measure under that section.

{2} Section 108 of the Federal Plant Pest Act provides: ``Any person who violates section 103 of this act, or any regulation promulgated under this act, or who forges, counterfeits, or without authority from the Secretary uses, alters, or defaces any permit or other document provided for by this act or the regulations thereunder, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding \$500, or by imprisonment not exceeding one year, or both."

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#### **§ 330.212 Movement of plant pests by baggage.**

Persons proposing to move plant pests into or through the United States from any place outside thereof, or from any Territory or possession into or through any other Territory or possession, or the Continental United States, by baggage, shall show the permit authorizing the movement to the inspector upon arrival at the port where the baggage is inspected. The conditions specified for the movement must be observed. The inspector will insure that the movement is handled in accordance with the terms of the permit. If it is necessary to move the plant pest to another place for clearance, the owner will be responsible for all costs incidental to such forwarding. Pending forwarding, the inspector will specify and supervise the application of safeguards against danger of plant pest dissemination and may retain custody of the pests until forwarded.